

GOVERNMENT OF TELANGANA
ABSTRACT

Tribal Welfare Department - Khammam District - Revision Petition filed by Smt Kompalli Nagamma W/o. Somaiah R/o Gopalrao pet Village, Pinapaka Mandal, Khammam District aggrieved by the orders of the Additional Agent to Government, Bhadrachalam in CMA.No.77/2005, dated 22.09.2007 - Rejected - Orders - Issued.

TRIBAL WELFARE (LTR) DEPARTMENT

G.O.Ms.No. 45

Dated: 12-10-2018

Read the following:-

- 1) Revision Petition filed by Smt Kompalli Nagamma W/o.Somaiah R/o Gopalrao pet Village, Pinapaka Mandal, Khammam district Dt: 26.11.2007.
- 2) Govt.Memo.No.8845/LTR/2007-1, dated 8.1.2008 & Govt.Lr.dt 08.01.2008.
- 3) From the Additional Agent to Government, Bhadrachalam, R.P.No.8445/LTR-2/2007-1, C.M.A.No.77/2005, dt 26.11.2008.

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ORDER

In the reference 1st read above, Smt Kompalli Nagamma W/o.Somaiah R/o Gopalrao pet Village, Pinapaka Mandal, Khammam District has filed Revision Petition before the Government aggrieved by the orders of the Additional Agent to Government, Bhadrachalam in CMA.No.77/2005, dated 22.09.2007 in respect of land to an extent of Acs.2.13 in Sy.No.26 and Acs.0.33 in Sy.No.25/E total extent Acres 3.06 gts. of Pinapaka (V&M) of Khammam District.

2. In the reference 2nd read above, while enclosing a copy of the Revision Petition, the Project Officer & Additional Agent to Government, Bhadrachalam was requested to furnish Para Wise Remarks and connected case records and in the reference 3rd read above the Additional Agent to Government, Bhadrachalam has furnished Para Wise Remarks and connected case records.

3. The Main grounds of the case are as follows:

- The Additional Agent to Government, Bhadrachalam totally failed to consider and appreciate the written arguments filed on 16.12.2006 on behalf of the petitioner, Smt Kompalli Nagamma and passed the order under revision without any justification and therefore the impugned order under appeal is liable to be set aside in obedience of the decision of the Hon'ble High court of judicature A.P. as reported in 2003 (3) ALT page-127 and 2005(2) ALT page-462 wherein the Hon'ble High Court declared that order passed without considering the written arguments cannot be sustainable under law and the orders passed showing the dead persons as petitioners is not maintainable under law;
- That the Additional Agent to Government having considering the averment that, the Special Deputy Collector(TW) has not at all conducted any enquiry and even to the fact that, whether the alleged petitioners to his proceedings and to the impugned order dt.12.04.2005 in LTR case No.22/2001/PNK dead or alive, and without appreciating the contention of the appellant that the said petitioners died long before the initiation of the case, and therefore the proceedings are nullity, and passed order under revision on presumptions and assumptions, and contrary to the settled law and the decisions of the Hon'ble High Court and the Hon'ble Supreme Court of India, and contrary to the provisions of Sec.3 of the Regulation 1/1970.
- The Additional Agent to Government & the Special Deputy Collector (TW), Bhadrachalam having noticed that there is no tribal interest involved in the schedule land, applying the presumption envisaged under the Regulation 1/70 and passing the order without there being any contention of any rival party is contrary to the spirit of the legislation and against the decision of the Hon'ble High court reported in 1978 (2) APLJ page-292 and on the other hand causing grave prejudice to the revision petitioner.

(Contd...2)

- The observation of the Additional Agent to Government having admitted that, the revision petitioner is in possession of the schedule land since prior to commencement of the provisions of Regulation 1/1970, and more particularly during the years 1969-70, 1970-71, 1971-72 as per the village accounts, applying the provisions of Regulation 1/1970 that the revenue authorities not mutated his name as Pattadar and directing the Mandal Revenue Officer, Pinapaka Mandal, Khammam District to eject the petitioner from possession of the schedule land, is nothing but abuse of the powers under the Regulation 1/1970 and contrary to the binding decisions of the Hon'ble High Court reported in ALT 2000 (Revenue) page 66 and Full Bench Supreme Court of India, as reported in 1995(6) SCC page-545, and the said observation is causing grave prejudice to the petitioner.
- The Additional Agent to Government & the Special Deputy Collector (TW), Bhadrachalam have not justified in directing the Mandal Revenue Officer, Pinapaka (M), Khammam District to take over possession of the schedule land for purpose of assignment to the members of Scheduled Tribe, without appreciating the provisions of Sec.3(2)(a) of the Land Transfer Regulation 1/1959 and failed to consider the decision of the Hon'ble High Court in Vasudha Mishra's case as reported in 1998(1) ALT 680, and failed to follow the guide lines issued by the Hon'ble High Court in the said case and failed to note that, as per the said provision of Law, the Government cannot take possession of the Schedule land and on the other hand the schedule land is liable to be restored to the vendor of the petitioner.
- The Additional Agent to Government, Bhadrachalam has not all exercised its powers as an appellate authority and ought to have at least remanded the case for denovo enquiry to the Special Deputy Collector(TW), Bhadrachalam by giving an opportunity to prove the averments by producing deemed evidence before the Special Deputy Collector(TW), Bhadrachalam during the trial, and failed to appreciate that, Special Deputy Collector(TW) Bhadrachalam, respondent passed the order without any trial or enquiry and ought have set aside the impugned order.
- The Additional Agent to Government, Bhadrachalam, in the absence of any counter averments from the respondents to the appeal before it, ought to have accepted the contents of the appellants and ought to have given an opportunity of being heard in due process of law, but on the other hand without considering the written arguments filed on behalf of the appellants passed order under revision with the observations as much as a counter to the arguments causing grave prejudice to the petitioner.
- That the observations of the Additional Agent to Government, Bhadrachalam, that the order passed by the Mandal Revenue Officer, Pinapaka (M), Khammam District being the recording authority under A.P Rights in Land & Pattadar Pass Books Act & the Rules made there under cannot be looked into and they are liable to be cancelled etc., are outside the purview of the powers vested with the respondent No.1, Additional Agent to Government and the 1st respondent has no authority to reject the evidentiary value of the said documents. Therefore the order is liable to be set aside.
- That the observations of the Additional Agent to Government, Bhadrachalam, and Special Deputy Collector, Bhadrachalam by giving much credence to the village accounts without considering that, the said accounts are maintained by the Mandal Revenue Officer, Pinapaka Mandal, Khammam District for fiscal purpose for collection of Land revenue and passing order without conducting any enquiry and without appreciating the pleadings of the appellants is absolutely arbitrary and is against the decision of the Hon'ble Supreme Court of India reported in 2007(7) SCJ 33(para-9), AIR 1994 sc 1653 and AIR 1997 S.C. 2181., that the entry made in the revenue register cannot form the basis for declaration of title of any person.

(Contd...3)

- That the observation of the Additional Agent to Government, Bhadrachalam that unless a death certificate is produced no person's death can be considered as true is not correct and failed to note that, in the absence of any death certificate(s) death can be proved on various methods, and ought to have given opportunity to prove the death of the petitioners in the lower court by taking up the enquiry by way of issuing summons to the other legal heirs of the deceased as well as the village elders.
- That the impugned orders of the Additional Agent to Government, Bhadrachalam and Special Deputy Collector (TW), Khammam District without appreciating the fact that, the petitioner is a land less poor person and that there is no tribal interest or government interest involved in the schedule land, and directing for ejectment of the appellants from the Schedule land and to take possession by the Government, without conducting any enquiry even in summary manner, more particularly when the petitioner is proving her possession prior to the commencement of the Regulation 1/1970 by producing the relevant pahanies cannot be sustained under Law and is against the decision of the Hon'ble Supreme Court of India reported in 1982(2) APLJ7 (S.C).

4. The remarks of the Additional Agent to Government, Bhadrachalam on the Revision Petition are as under:

- It is not correct to say that the Additional Agent to Government, Bhadrachalam, totally failed to consider and appreciate written Arguments filed on 16-12-2006. The Additional Agent to Government, Bhadrachalam after considering the arguments and the documents filed by the Revision petitioner passed orders.
- The contention of the revision petitioners is that the Additional Agent to Government, Bhadrachalam, herein in lower court passed orders against the dead person. Before the Additional Agent to Government, Bhadrachalam, the Revision Petitioner filed a CMA showing them as 1 & 2 respondents (dead) and filed the CMA. It is unable to understand how the Revision Petition filed a CMA showing the dead persons as one of the parties. The Revision Petitioner has not filed any proof of death to show that the lower court passed orders on dead person.
- The scheduled land is situated in the scheduled area the burden of proof is lies on the non-tribal to prove his possession is not hit by regulation 1/59 amended by 1/70.
- The petitioner is claiming the schedule property through sada sale agreement dt10-02-1969. Before Additional Agent to Government, Bhadrachalam, he filed Xerox copy of the alleged sale deed which is unstamped on white paper which cannot be admitted as evidence without valid sale the petitioner cannot claim any right over the schedule property.
- As per the Hon'ble High Court A.P. Hyderabad in W.A.No.78/1991 and 1664/1988 and W.P.Nos.13377/1986, 13470/86, dt 13-02-1993 published in 1993(1) ALT.409 (FB) in Vemula Somalamma V/s Spl.Dy.Collector (TW) Ramapachodvaram "when a non-tribal transfers the land to a non-tribal in contravention of the provisions of Sec.3(1)a, he will not be entitled to ask the authorities for restoration of the property in his favour invoking the provisions of clause (a) of sub-sec(2) of Sec.3. The said clause will not apply to a non-tribal transferor". As per the decisions of the Hon'ble High Court, the lower court rightly passed ejectment orders.
- There is no necessity to remanded case to the lower court because the revision petitioner has filed all the documents before the Additional Agent to Government, Bhadrachalam. The Additional Agent to Government, Bhadrachalam, after due verification passed orders.

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- It is not correct to say the direction to cancel the PPBs is outside the purview of the Additional Agent to Government, Bhadrachalam. The schedule land is situated in the Agency tracts and Additional Agent to Government, Bhadrachalam is having power to cancel the said pattadar pass books when he found that the transaction is hit by Land Transfer Regulation 1 of 59 amended by 1/70. The Revenue authorities while issuing pattadar pass books must verify whether the transaction has taken prior to the regulation though having valid documents then only the pattadar pass book should be issued. The Revenue authorities should not considered sada sale deed which are on white paper as the schedule land is situated in the schedule area. Therefore the Additional Agent to Government, Bhadrachalam, having power to verify and cancel the said pattadar pass books.
- The Revision Petitioner contention is that the Village accounts cannot be treated a basic for declaration of title of any person. As per the Revenue records the pattadar column, enjoyer's column and other column will be maintained by the Revenue authorities. As per the said record pattadar and enjoyer are different. The petitioner is claiming the schedule property through unregistered sada sale deed. The petitioner is saying that the entries in the pahanies cannot be formed for the basics of title. Therefore the Revision Petitioner is unable to explain the case whether the court has to rely up on the sale agreement with entries made in the pahanies one side the petitioner is saying that his name find place in pahanies prior to 1970 and on other hand the petitioner's says the entries made is cannot be treated as basics for declaration of title.
- The petitioner failed even though he was given sufficient opportunity to produce death certificate and also failed to prove the death by way of other means. The petitioner totally failed to prove his lawful possession prior to the commencement of the Land Transfer Regulation.
- In the facts and circumstances stated above that the action taken by the lower courts (Respondent 1 and 2nd herein) is proper and legally correct accordingly to the provisions of APSA LTR Regulation 1 of 59 amended by 1 of 1970. It is therefore prayed that the Govt. may be pleased to dismiss the Revision Petition.

5. Government after conducting hearings and after careful examination of the Revision Petition and as verified from the documents produced before the authority as well as before the Additional Agent to Government, Bhadrachalam it is observed that;

- The Revision Petition is filed against the order of Additional Agent to Government, Bhadrachalam, in CMA.No.77/2005, dated 22.09.2007. Revision Petitioner claims that he purchased the land from Sri Bolisetty Gopaiah under agreement of sale dt 10.02.1969. As seen from the sale deed/ agreement it is a sada sale deed not registered. As per pahani in the years 1969-70, 1970-71, 2002-2003 and 2003-04 Sri Bolisetty Gopaiah is pattedar. The Revision Petitioner has been issued Pattadar Pass Book under Rights of Rule at a later date. Rights of Rules is not valid in Scheduled Area.

6. Government after careful examination of the matter, hereby rejects the Revision Petition of Smt Kompalli Nagamma W/o. Somaiah R/o Gopalrao pet Village, Pinapaka Mandal, Khammam District and upholds the orders of the Additional Agent to Government and Project Officer, ITDA, Bhadrachalam in CMA.No.77/2005, dated 22.09.2007 in respect of land to an extent of Acs.2.13 in Sy.No.26 and Acs.0.33 in Sy.No.25/E total extent Acres 3.06 gts. of Pinapaka (V&M) of Khammam District.

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7. The Additional Agent to Government and Project Officer, ITDA, Bhadrachalam, Bhadradri Kothagudem District shall take necessary further action accordingly. The original case records received in the reference 3rd read above are returned herewith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

BENHUR MAHESH DUTT EKKA,
SECRETARY TO GOVERNMENT

To

Smt Kompalli Nagamma W/o.Somaiah

R/o Gopalrao pet Village, Pinapaka Mandal, Khammam district.

Legal Heir of Sri Bolisetti Nageswar Rao, S/o Gopaiah,

R/o Gopalaraopeta (V), Pinapaka (M)

Erstwhile Khammam District.

Legal Heir of Sri Bolisetti Gopaiah S/o Sambaiah,

R/o Gopalaraopeta (V), Pinapaka (M)

Erstwhile Khammam District

The Project Officer, ITDA and Additional Agent to Government,

Bhadrachalam, Bhadradri Kothagudem District (w.e.)

Copy to :

The Government Pleader for Social Welfare, High Court Buildings, Hyderabad.

The Special Deputy Collector(TW), Bhadrachalam, Khammam District.

for information and necessary action.

The Mandal Revenue Officer, Pinapaka Mandal, Khammam District.

Sri Nanduri Srinivasa Rao ,Advocates

Bhadrachalam - 507 111.

P.S to M(TW)/P.S. to Secretary(TW)

SF/SC

// FORWARDED:: BY ORDER //

SECTION OFFICER